

Editor's note: Reconsideration denied by order dated Feb. 3, 1983

SOCO 1980 ACREAGE PROGRAM

IBLA 82-826

Decided October 28, 1982

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, canceling fractional-interest oil and gas lease W-75537 and declaring that interest to be included in lease W-46222.

Affirmed in part, reversed in part.

1. Oil and Gas Leases: Future and Fractional Interest Leases

Where the Government owns a 50 percent mineral interest in certain acquired lands and has issued an oil and gas lease for that fractional interest, and it then obtains the remaining 50 percent at a time when the original acquired fractional interest is still under lease, it is error to issue a second oil and gas lease to another party for the newly vested fractional interest, and the second lease is properly canceled upon recognition of the error.

2. Oil and Gas Leases: Future and Fractional Interest Leases

Where the Government owns a 50 percent mineral interest in certain acquired lands and it subsequently obtains the remaining 50 percent mineral interest at a time when the originally acquired interest is subject to a federal oil and gas lease, the recently acquired fractional interest is not automatically included in the existing oil and gas lease of the original fractional interest.

APPEARANCES: Daniel A. Gottenborg, Esq., Denver, Colo., for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

In 1970 the United States acquired a certain tract comprising approximately 996.5 acres in Nebraska. The grantors to the United States reserved one-half of the oil, gas and other minerals for a period to end on July 18, 1978. On July 1, 1976, Jerry Chambers was issued oil and gas lease W-46222 for the fractional interest then owned by the United States. SOCO 1980 Acreage Program (SOCO) applied for and, on April 1, 1982, was issued oil and gas lease W-75537 for the recently acquired fractional interest. Thus, at that point, the Wyoming State Office of the Bureau of Land Management (BLM) had issued two separate fractional oil and gas leases for the same land, each lease for 50 percent of the oil and gas rights.

By its decision of April 30, 1982, BLM cancelled SOCO's lease W-75537, stating that the lease had been issued in error. It held that when the remaining 50 percent interest vested in the United States it merged with the first-acquired 50 percent and was, therefore, included in lease W-46222 held by Chambers, citing the decision of this Board in Wilfred Plomis, 62 IBLA 162 (1982), as authority for that conclusion.

SOCO appeals, arguing that BLM's reliance on the Wilfred Plomis decision was misplaced; that there is statutory and regulatory authority for the acquisition of an oil and gas lease of a subsequently-vested interest, and separate procedures which must be followed by an applicant for such a lease; that SOCO followed these procedures, while Chambers did not; that, therefore, SOCO's lease was properly issued and should not have been cancelled.

[1] We know of no authority whereby two separate fractional interests in the same public lands may be leased contemporaneously. There is no statute authorizing the United States to issue fractional oil and gas leases when it holds title to the entire mineral estate. In fact, 30 U.S.C. § 354 (1976) expressly conditions the leasing of partial or future interests to those situations "[w]here the United States does not own all of the mineral deposits under any lands sought to be leased * * *." (Emphasis added). ^{1/} In Duncan Miller, A-29425 (July 23, 1963), this Department held that, "An offer for a 50 percent fractional interest [oil and gas] lease cannot be accepted if in fact the United States owns all the mineral interest." This holding was reiterated in Wilfred Plomis, supra.

Even assuming, arguendo, that authority existed for the contemporaneous issuance of separate fractional interest leases of the same land, such leasing would still be a matter of discretion, and the issuance of a separate

^{1/} SOCO argues that, unlike 30 U.S.C. § 354 (which deals with partial and future interests in deposits), 30 U.S.C. § 352 provides for the leasing of all deposits of oil and gas in acquired lands of the United States. However, both provisions are part of the same statute, the Mineral Leasing Act for Acquired Lands, 61 Stat. 914. Section 352, supra, provides general leasing authority, whereas sec. 354 is specifically controlling where the Federal interest is fractional or will vest in the future.

fractional interest lease for the recently acquired 50 percent in the circumstances of this case would constitute a clear abuse of such discretion, as discussed below. First, the primary terms of the Chambers and SOCO leases are not coincident. Were the SOCO lease allowed to remain in effect, the Chambers lease would normally expire in July 1986, but the SOCO lease would continue until April 1992. Even if the Chamber's expired fractional interest were withheld from further leasing, it would be at least 1992 before the entire Federal mineral estate could be united in a single lease. But if the separate leasing of the respective fractional interests were continued, it is unlikely that they would ever be consolidated without an assignment by one of the lessees to the other, and, even then, their terms would not be coincident. Such a separation of the mineral estate is an impediment to the development of the leasehold for the production of oil and gas, and could thwart the very object of the mineral leasing acts under which the separate leases purported to issue. Such a result would clearly contravene public policy. As noted in Sun Oil Co., 67 I.D. 298, 300 (1960), "It seems apparent that having unified development of the Government's oil and gas rights in the entire block is more in the public interest than permitting divergent ownership of the rights."

Moreover, on October 28, 1976, 43 CFR 3130.2-1 was amended to eliminate the proration of rentals for fractional interest leases, and to impose the full acreage rental on leases issued thereafter, regardless of the extent of the fractional interest represented by the lease. One former appellant, arguing against the propriety of charging full rental for a fractional interest, conceived a scenario in which several lessees held fractional interest Federal leases in the same land, each paying the full acreage rental, resulting in the Government receiving several times the established rental for a single tract. See Wilfred Plomis, 45 IBLA 230 (1980). In that case, the Board noted that it had been held (in the instance of assignments of separate strata of an oil and gas lease) that the payment of multiple rentals was improper. In a subsequent opinion this Board declared:

* * * Indeed, inasmuch as 43 CFR 3130.2-1 expressly prohibits proration of rentals for fractional leases, issuance of two 50 percent leases would result in doubling the rentals prescribed for leasing an undivided 100 percent interest. We doubt that such an approach was ever even contemplated as a means of increasing the Government's revenues.

Wilfred Plomis, 62 IBLA at 163-164 (1982).

Yet, in the case before us, the continuation of SOCO's fractional interest lease would result in the Government's receipt of multiple rentals for its single interest.

In summary, then, we find that the issuance of the lease to SOCO was unauthorized and, further, that it cannot be treated as a proper exercise of the delegated discretionary power of the Secretary to act in the public interest, and we affirm the cancellation of the SOCO lease.

[2] However, we cannot affirm that portion of BLM's decision which holds that the after-acquired fractional interest is included in the Chambers lease. Although BLM relied on Wilfred Plomis, 62 IBLA 162 (1982), in so holding, the Plomis case is easily distinguished from the instant case. In Plomis this Board cautioned that "[w]hile we hold that the two separate estates merged upon the vesting of the retained mineral interests, our holding herein is limited to the facts of the present case where the original mineral interest of the United States was unleased at the time that the retained interest vested in the United States." Wilfred Plomis, *supra* at 164 n.2. (Emphasis added). Unlike the situation in Plomis, the present situation involves a previously acquired mineral interest that was leased at the time the subsequently acquired interest vested.

When Chambers applied for the 50 percent fractional interest which was then vested in the United States, the regulations provided application procedures for the lease of the outstanding future fractional interest which would later vest in the United States. Had he wished to secure the right to a lease of that future fractional interest, he needed to follow the prescribed procedures. However, Chambers did not apply for anything but the one-half interest already possessed by the United States. The application for and rental paid on lease W-46222 evince no intention on his part to acquire more.

Also, when the Chambers lease issued, 43 CFR 3130.2 still provided for rentals to be prorated in proportion to the interest leased. Therefore, W-46222 is subject to an annual rental of only \$ 249.50 for his half-interest lease of 996 + acres. But since then, not only has that regulation been amended to require the payment of the full per-acre rental, but that rental amount has doubled, from 50 per acre or fraction thereof to \$ 1.00. Therefore, the rental for the newly acquired fractional lease of this tract would be \$ 997.00. BLM cannot simply add the second 50% interest to Chamber's lease without adjusting the rental, nor can it unilaterally add the additional interest (for which Chambers has never applied) to his present lease and impose a higher rental.

Were Chambers now to apply for a lease of the additional fractional interest, we know of no provision of statute or regulation which would authorize BLM to lease it for a reduced term so that it would expire at the same time as lease W-46222. Moreover, doing so would resurrect the problem of multiple rentals.

Therefore, although the title to the mineral estate has merged in the United States, the oil and gas rights owned by the United States are divided, and it appears that those two interests can only be united by withholding the second-acquired interest from leasing until the lease of the first-acquired interest expires or is otherwise terminated. To create another lease of the second-acquired interest clearly would not be in the public interest, as explained above, and 30 U.S.C. § 354 (1976) limits the issuance of any fractional interest lease to those situations where, "in the judgment of the Secretary, the public interest will be best served thereby." Accordingly, the second-acquired interest should be withheld from leasing until both interests can be united in a single lease.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed in part and reversed in part.

Edward W. Stuebing
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

